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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1136th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 1 March 1996, at 10 a.m.

Chairman: Mr. BANTON

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Sixth and seventh periodic reports of Colombia (CERD/C/257/Add.1) (continued)

1. At the invitation of the Chairman, the members of the Colombian delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Colombian delegation to reply to the questions put by members of the Committee at the preceding meeting.

3. Mr. GONZALES (Colombia) thanked the members of the Committee for their interest in the human rights situation in Colombia. Some questions had already been considered in other United Nations bodies, especially the Committee against Torture and the Committee on Economic, Social and Cultural Rights. He would therefore confine himself to answering questions specifically related to racial discrimination.

4. Colombia was the scene of many acts of violence attributable both to agents of the State and to paramilitary groups or guerrillas or resulting from drug trafficking or plain delinquency. In 1995, the Colombian Government had undertaken, in the Commission on Human Rights, to apply to the Centre for Human Rights for the provision of advisory services and technical assistance, particularly for the purpose of putting an end to impunity in the country, and had established a Committee to implement the recommendations made by the Commission's thematic rapporteurs following their visits to Colombia. A bill for the establishment of a system of compensation for damage caused by human rights violations perpetrated by agents of the State had been drawn up. Important steps had also been taken to reform the criminal and military justice systems. An institutional reform process had been initiated in 1991 and a large number of legislative measures designed to combat racial discrimination against indigenous and Afro-Colombian groups had been adopted. Those reforms had been necessary and did not constitute "over-institutionalization", as Mr. van Boven seemed to think.

5. In reply to a question by Mr. Lechuga Hevia, he said that Colombia had always rejected apartheid and racial discrimination. The statistics which he had mentioned and which showed substantial inequalities among different population groups with regard to education and health related to only one part of the national territory, the Pacific coast. The statistics submitted by the Colombian Government to the Committee on Economic, Social and Cultural Rights were very different and showed the progress made in reducing the social gap. The country's four-year development plan (El Salto Social) had been drawn up in order to provide better protection for the social, economic and cultural rights of the population, particularly the most disadvantaged social sectors.

6. With regard to Mr. Chigovera's question concerning the effects of the state of emergency on the rights of minorities, he pointed out that the Colombian Constitution had been amended and now prohibited any suspension of human rights and fundamental freedoms during a state of emergency. Paragraphs 108 to 110 of the report listed the many judgements handed down by

different judicial organs and the Constitutional Court to protect the rights of the country's indigenous and Afro-Colombian populations and the text of those judgements could be made available to members of the Committee if they so desired. The Constitutional Court had also handed down an important judgement which stated that due obedience to military orders could not be invoked as a defence in human rights cases.

7. In reply to a question by Mr. van Boven, he said that the problems of the Uraba region were explained by the fact that the region was not racially homogeneous and was the scene of a struggle between two armed factions. They were the EPL (Ejército Popular de Liberación), which had laid down its arms and had been converted into a new political party called "Esperanza, Paz y Libertad" (Hope, Peace and Freedom), and the FARC (Fuerzas Armadas Revolucionarias Colombianas), which violently opposed the reintegration of guerrilla movements into civil society. However, the victims of the struggle were not only members of the indigenous and black communities; the entire population was suffering from the consequences. The Colombian Government had informed the competent United Nations organs of the measures taken to punish those responsible for the violations committed, whether by guerrillas, paramilitary groups or members of the police, and to prevent the enlistment in the armed forces of children under 18 years of age, who often came from indigenous groups. He would notify the competent authorities of Mr. van Boven's concern about the disappearance of Mr. José Casedes Gonzales.

8. The establishment of the office of an Ombudsman under the 1991 Constitution had marked a very important stage in the protection of human rights in Colombia. The Ombudsman was legally empowered to file an application for "protection" before the courts. Any citizen could institute such proceedings, under which he could seek compensation if he considered that his constitutional right had been or might be violated. The Colombian Government was open to international cooperation in the field of human rights and had already received aid from Norway to help persons who had been displaced within the country as a result of violence, not all of whom were members of ethnic minorities.

9. Mr. MURILLO MARTINEZ (Colombia) said that his Government had taken important steps to combat the cultural and social discrimination to which, according to the Andean Commission of Jurists, certain indigenous and Afro-Colombian communities continued to be subjected. Nevertheless, he considered that the results could be assessed only in the long term. Initially, it was important to take account of each community's specific features and potentialities and to improve existing "ethnic education" programmes designed to meet the expectations of ethnic groups by making allowance for their cultural values.

10. With regard to the penalties applicable in cases of human rights violations, contemporary forms of racial discrimination had to be seen in the context of everyday Colombian life. The Latin American countries had experienced slavery in the past and certain subtle forms of racial discrimination which could not be examined in the light of the usual considerations were still to be found. It was therefore often difficult to suppress certain acts and forms of behaviour which reflected situations deeply rooted in the country's culture. An example was the frequent opposition of some parents to their child's marrying a person from a different ethnic group.

A very great educational effort was required and it would be desirable for the country to receive assistance from organizations like the United Nations in order to combat existing forms of veiled or often even unconscious racism which escaped all control and could not be repressed.

11. As far as the jurisdiction of the courts specifically established to deal with indigenous community affairs was concerned, Colombian legislation had made great progress, since it permitted members of indigenous communities to be tried with due regard for their particular cultural background. That right was, of course, qualified: an indigenous person who committed an offence outside the jurisdiction of the special courts would be tried by the ordinary courts.

12. With regard to the right of indigenous communities to exploit their natural resources and to the extent of their autonomy in such matters, Colombian legislation contained a large number of provisions prohibiting the exploitation of natural resources located in the territory of an indigenous community unless that community's consent was given and its rights were guaranteed. Those provisions were effectively implemented. The process of assigning lands to black communities provided for by Act No. 70 of 1993 under the agrarian reform programme had been regulated by a decree dated 12 October 1995. It was thus a completely new reform in its initial stages. Several community councils had already been established. Of course, the reform gave rise to a number of social and economic problems, since it created conflicts of interest between the large enterprises which exploited the natural wealth of the regions concerned and the local communities to which that right accrued, but, despite such transitory difficulties, it would make it possible to ensure a better distribution of resources in favour of the indigenous communities.

13. The resguardos were not reservations, but lands held collectively by the indigenous communities to which they had been assigned to enable them to preserve and develop their cultural and social traditions. Those communities were fully free to move throughout the national territory. Their property rights to such lands were inalienable and imprescriptible. It should be noted that the allocation of permits to exploit natural resources situated on the lands in question had been frozen until the adoption of the Decree of 12 October 1995 so as to protect the rights of the black communities who were to receive the lands. The black communities' right to collective property was not incompatible with the right to individual property.

14. The implementation of the legally recognized principle of equality in employment, according to which everyone had the same rights in matters of employment and work, sometimes came up against difficulties in practice because of structural factors arising from the country's history. No doubt specific measures would have to be adopted, as had been done in the case of admission to university, in order to guarantee the effective implementation of the law.

15. Replying to another question put by the Committee, he explained that the black communities had reacted very favourably to the Colombian Government's invitation to them to serve on the high-level advisory commission established to verify the implementation of Act No. 70, since their rate of attendance at the Commission's meetings was on average 96.5 per cent.

16. Mr. GONZALES (Colombia), replying to a number of other questions put by members of the Committee, said that the mechanisms provided to ensure the participation of minorities in the management of public affairs were functioning effectively. There were several black representatives and two senators elected within a special constituency to represent the interests of the indigenous populations in Congress, which also included other parliamentarians of indigenous origin elected in ordinary constituencies.

17. His delegation was willing to provide the Committee with all the information it had on the problems in the area to the north of Santander mentioned by Mr. Yutzis. With regard to the problems caused by the construction of a dam in the Sinu area, negotiations were under way between indigenous representatives and the builders of the dam with a view to finding a compromise solution. The area in which the events of the beginning of 1993 mentioned by Mrs. Sadiq Ali had occurred was an extremely complex area experiencing many different problems connected, inter alia, with the presence of gold diggers, drug trafficking and pollution. In any case, the Government was taking action to protect national minorities and it would inquire into the death of the four indigenous persons referred to by Mrs. Sadiq Ali. He would respond to the request put to him by the Special Rapporteur on extrajudicial, summary or arbitrary executions in that connection.

18. In reply to the question whether there were any housing programmes for indigenous or black communities, he said that, although specific measures had been taken in certain areas, such as in the east of the Department of Cauca, there was not really any national housing policy for indigenous communities.

19. In conclusion, he pointed out that, at the latest Geneva meeting of the Working Group responsible for preparing a draft declaration on the rights of indigenous peoples, the NGOs had issued a special statement in which they had cited the case of Colombia as an example of progress made in realizing the rights of indigenous communities. He invited the Committee to visit his country to verify, on the spot, the progress actually made.

20. Mr. FERRERO COSTA congratulated Colombia on its obvious willingness to engage in a dialogue and on its ample, if not complete, report, which gave an account of the substantial progress made in legislation on aspects of direct interest to the Committee. While welcoming the information supplied in paragraphs 108 to 110 of the report, he requested that some further information on the penalties provided for in cases of racial discrimination should be given in the next report.

21. Despite all its qualities, Colombia's report had certain gaps. For example, it was not explained how the standards adopted, particularly those stemming from the new Constitution, were being put into practice. It would be helpful if the next periodic report could state specifically what consequences the new Constitution had had for the black and indigenous populations, for example, in what concrete cases the Ombudsman had had to intervene and what practical effects the establishment of the National Indigenous Affairs Policy Council and the National Planning Council, mentioned in paragraphs 56 and 57 of the report, respectively, had had on the populations concerned. It would also be helpful if the arrangements for the autonomy of the territorial units referred to in paragraph 5 could be explained in greater detail.

22. He was also concerned about Colombia's reply with regard to the implementation of article 4 of the Convention, since there seemed to be a misunderstanding in so far as the implementation of the article, which was mandatory for States parties, did not presuppose the existence of racist organizations. In the absence of such organizations, the measures to be taken were of a preventive nature, as Peru and Ecuador had understood. In that connection, it was important to state that the Committee most certainly recognized that violations of human rights were being committed both by non-governmental entities and by agents of the authorities, but that it did not conclude from that that the Colombian Government was pursuing a systematic policy of human rights violations.

23. He recommended that the situation in Colombia since the adoption of the new Constitution should be described in a general document which would be prepared for the benefit of all human rights bodies and should also give specific details on the practical implementation of the new legislation.

24. He noted that Colombia had not yet made the declaration provided for in article 14 and urged the Colombian Government to consider the possibility of doing so, thereby following the example of four other Latin American countries. He also asked Colombia to consider ratifying the amendment to article 8 of the Convention.

25. Mrs. ZOU requested the Colombian delegation to give the exact numbers of indigenous and black deputies in Parliament. With regard to the invitation for the Committee to send a representative to Colombia, it seemed to her that, if the Centre for Human Rights was not in a position to finance the trip, the members of the Committee and Colombia itself could look for other sources of financing.

26. Mr. van BOVEN said that, despite what the representative of Colombia seemed to think, some issues of concern to other human rights bodies, such as violence, also fell within the competence of the Committee on the Elimination of Racial Discrimination in so far as they affected members of particular groups. The fact that certain victims were not targeted as blacks or indigenous did not mean that the impact of the violence was negligible. The Committee was joining the bodies which had requested that the exactions should be investigated.

27. It was also regrettable that the Committee had still not received a reply from Colombia on its position with regard to the declaration provided for in article 14 of the Convention. In making that declaration, Colombia would merely be following the path which it had taken when it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights. The question of Colombia's ratification of the amendment to article 8 of the Convention had also not yet been solved. It was to be hoped that the Committee's expectations would soon be satisfied.

28. Finally, unlike what had happened in the case of its other periodic reports, Colombia really should take greater account of the Committee's general conclusions and observations in its next report.

29. Mr. de GOUTTES raised the issue of street children, who were generally members of black or Afro-Colombian minority groups. He asked what the

Government was doing to protect them against enforced enlistment and the exactions of which they were victims. He also requested some further information on the programme for indigenous legal systems referred to in paragraph 59 of the report and on the specific nature, operation, jurisdiction and scope of the indigenous affairs courts.

30. Mr. YUTZIS welcomed the fact that Mr. Gonzales had invited the Committee to send one of its members to Colombia. The Centre for Human Rights should be able to provide it with the resources required to finance the trip.

31. It could not be said that Colombia was pursuing a racist policy. The difficulties encountered by indigenous and black communities were attributable to their economic status. Having conducted his own inquiry, he had learned, for example, that, out of 20,000 students at the State University, there had been not even 180 indigenous students and only 8 of them had obtained their degree in 1995; that the proportion of under-weight new-born babies was very high among indigenous communities; that some indigenous communities were 5 km away from the nearest water supply; and that cholera and dengue fever epidemics were not uncommon.

32. He was also greatly concerned about the implementation of article 7 of the Convention, since a "culture of discrimination" was involved. That problem was, moreover, not peculiar to Colombia, but reflected an almost universal trend. Such a culture was often propagated by the media, which perpetuated certain preconceived ideas. He had been able to ascertain, for example, that in many television programmes the roles of humble people were played by dark-skinned persons. He would like to have some up-to-date information on the implementation of article 7 of the Convention in Colombia's next report.

33. Mr. GONZÀLES (Colombia) expressed his conviction that his country's next report would give an account of considerable progress in the human rights field. Already it could be stated that the Ombudsman was at work and that some of his reports were even being studied by United Nations human rights bodies.

34. The Indigenous Affairs Policy Council and the National Planning Council had already had a practical impact and the statements made the day before and at the current meeting had presented the new model for the protection of the fundamental rights of Colombians. The result of such an institutionalization of the protection of fundamental rights would appear in greater detail in the next periodic report. The factual situation relating to the autonomy of territorial units, which was one of the immediate effects of the application of article 1 of the Constitution, would also emerge much more clearly.

35. He would certainly transmit the Committee's observations on the specific provisions required by article 4 of the Convention to his Government. The more general provisions were already quite effective. The next report would also be supplemented by information on the essence of what had already been submitted to other human rights bodies; he would also indicate Colombia's position regarding the declaration provided for in article 14 and the amendment to article 8 of the Convention.

36. On the other hand, it was unlikely that an exact figure could be given for the number of black and indigenous elected members of the country's deliberative organs, since there were many of them and they did not always stand specifically as indigenous persons. Furthermore, cross-breeding was a characteristic feature of Colombia and deputies, whatever their colour, obtained their seats through popular support after having fought it out with other candidates on a footing of equality.

37. He intended to suggest to his Government that it should supply funds to supplement resources from the Centre for Human Rights to cover the trip to Colombia of a representative of the Committee.

38. The violence which the Government was endeavouring to end affected all citizens, regardless of the colour of their skin, their economic status or even their age.

39. The problem of street children, who came from all ethnic categories of the population, arose mainly in Bogotá and was explained by the socio-economic situation in the country in general and by the exodus from the countryside in particular. The State, through the Colombian Institute for the Protection of the Family, was trying to solve that difficult problem and had already recorded some successful results. The Government had drawn up various programmes to assist socially marginalized groups.

40. With regard to access by indigenous and black persons to higher education, it must be pointed out that the National University of Colombia, which was a public establishment, was not representative of the situation prevailing in the country as a whole. There were, in fact, private universities where fees were lower than at the public universities and which were attended by many Afro-Colombian and indigenous students; the Free University of Colombia and the University of the Cauca were examples.

41. It was true that the nutritional problems experienced by indigenous communities were the cause of diseases such as tuberculosis. The social development plan (El Salto Social) and the indigenous people's programme being implemented by the Ministry of Health and the Ministry of Labour aimed at solving those problems. It would also be necessary to improve the supply of drinking water for the population living in the semi-desert area of the Guajira in order to combat diseases such as cholera and dengue fever.

42. The Government would try to give full effect to the provisions of article 7 of the Convention with regard to the campaign against prejudices that led to racial discrimination.

43. In conclusion, he assured the Committee that the Colombian Government would take due account of its comments and observations, as well as of its recommendations, particularly those relating to article 14 of the Convention, and that it would continue to comply with its obligations under the Convention.

44. The CHAIRMAN thanked the Colombian delegation for the fruitful dialogue which it had established with the Committee. The Committee had thus completed the first part of its consideration of Colombia's seventh report.

45. The Colombian delegation withdrew.

Draft letter to the Committee against Torture (CERD/48/Misc.9) and draft letter to the Permanent Representative of the Federal Republic of Nigeria (CERD/48/Misc.8)

46. Mr. FERRERO COSTA suggested that, in cooperation with Mr. van Boven, he should make a few amendments to the two draft letters and then submit them to the Committee for approval.

47. The CHAIRMAN said that, if there was no objection, he would take it that the Committee accepted that suggestion.

48. It was so decided.

ELECTION OF OFFICERS (agenda item 3) (continued)

49. Mr. RECHETOV proposed that, in the absence of Mr. Diaconu, who was held up in Romania for family reasons and whom the secretariat had not been able to reach, the Committee should elect Mr. Garvalov to the office of third vice-chairman of the Committee.

50. Mrs. SADIQ ALI, Mr. FERRERO COSTA and Mr. de GOUTTES supported that proposal.

51. Mr. Garvalov was elected Vice-Chairman by acclamation.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION (agenda item 7)

52. Mr. SCHMIDT (Secretariat) said that the Committee currently had before it two communications concerning one State party. Despite the reminder that had been sent to it, the State party concerned had still not submitted any observations or explanations to the Committee and had been informed that in any case the Committee would take up the communications in question at its next session. The Centre for Human Rights had also received two other communications, but unfortunately the States parties concerned had not made the declaration provided for in article 14 of the Convention.

53. Mr. YUTZIS said that he would like the Committee to open a debate on the reasons why only 22 States parties had made the declaration under article 14. He wondered whether the slowness with which the Committee had decided on the few communications which had been submitted to it had not deterred some States from making the declaration.

54. Mr. SCHMIDT (Secretariat) said that the Centre for Human Rights had nevertheless done everything it could to make the procedure known to States parties.

55. The CHAIRMAN said that, for its part, the Committee was doing everything in its power to convince States parties to make the declaration and was urging those States parties which had accepted the procedure to give it widespread publicity.

56. Mr. FERRERO COSTA said that he would like the Committee to take up communications in public and not in closed session, as was currently the case.

57. He agreed with Mr. Yutzis that it would be necessary to shorten the duration of the proceedings even if the Committee's rules of procedure had to be amended for that purpose. With that in view, he proposed that the two communications mentioned by Mr. Schmidt should be considered at the present session.

58. Mr. de GOUTTES said that he wondered whether certain communications sent to other treaty bodies ought not in fact to be considered by the Committee and whether the secretariat was acting as a sorting office in that regard.

59. Mr. SCHMIDT (Secretariat) said that, so far, the Committee had never decided on a communication without having taken cognizance of the observations of the State party concerned and that it might not be wise to change that practice.

60. As far as the duration of the proceedings was concerned, the Committee spent on average less time than did the Human Rights Committee in deciding on the communications before it.

61. With regard to the number of communications, it should be pointed out that 87 States had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and that 40 States had made the declaration provided for in article 22 of the Convention against Torture.

62. Furthermore, in the very rare cases in which a petitioner sent a communication to the secretariat without specifying which Committee it was intended for, the secretariat advised the petitioner, but could not tell him what his decision should be.

63. The CHAIRMAN suggested that Mr. Ferrero Costa, in collaboration with any other members of the Committee who so desired, should consider ways of shortening the proceedings and should formulate proposals for that purpose at a forthcoming meeting. If there was no objection, he would take it that the Committee accepted that suggestion.

64. It was so decided.

OTHER BUSINESS

65. The CHAIRMAN said that the reply of the Sixteenth Meeting of States Parties to the letter which the Committee had sent to it (CERD/SP/56) in accordance with a recommendation made by the Meeting of persons chairing human rights treaty bodies was, in his opinion, very disappointing and that the Committee would have to draw the necessary lessons from it in the course of the session. It would be helpful if Mr. Garvalov, who, as Chairman of the Committee, had participated in the most recent Meeting of persons chairing human rights treaty bodies, could give his opinion on the matter at a subsequent meeting.

The meeting rose at 1 p.m.